



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT MT OLC FFT

Introduction

This hearing was convened as the result of the tenant's application and amended application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the "Notice") and for more time to file an application to dispute the Notice.

The tenant then filed an amended application seeking an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the applications or the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

At the beginning the hearing, the tenant disclosed that the landlord changed the lock to the rental unit and that he had therefore vacated.

As the tenancy is now over, I determined that the portion of the tenant's applications dealing with his request to cancel the landlord's Notice, with his request for more time to file an application to dispute the Notice, and for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement are now moot.

I therefore dismiss those portions of the tenant's applications, without leave to reapply.

I find it important to note that the evidence shows the landlord did not serve the tenant with a Notice complying with the Act on the correct form. The Notice to which the tenant referred was a note to the tenant telling him to move out. The tenant was informed that this note was not a valid way to end a tenancy and therefore he was not required to vacate.

The hearing proceeded on the tenant's monetary claim.

Additionally, the landlord asserted that the rental unit was a shared accommodation and not within the jurisdiction of the Act.

Issue(s) to be Decided

Does this dispute fall within the jurisdiction of the Act?

If so, is the tenant entitled to monetary compensation from the landlord and to recovery of his filing fee?

Background and Evidence

The tenant said he was never provided a written tenancy agreement for this tenancy. The tenant said that this tenancy began three years ago and monthly rent was a flexible amount, depending on work he performed around the premises. The agreed upon amount was \$750.00, but was reduced when he did yard work.

The tenant said he paid a security deposit of \$375.00. The tenant also said he was never given a receipt for rent paid or the security deposit.

The tenant's monetary claim is \$423.00, comprised of a return of his security deposit of \$375.00 and lost wages of \$48.00.

Landlord's response-

In response to my inquiry, the landlord said that the rental unit was part of shared accommodation between the parties and other residents. In explanation, the landlord said he owned the residential property, rented out bedrooms to several other occupants, and that he stayed there whenever he was in town, which was not very often.

In response to my inquiry, the landlord said that the lower suite, where the tenant's bedroom was located, had a separate kitchen and bathroom; however, the landlord said that when he is in town, he sleeps in a spare bed in the upper unit, but has been known to sleep in the lower unit.

As to the tenant's monetary claim, the landlord submitted that the tenant never paid a security deposit. The landlord said that when the tenant moved in, he told the landlord he was having a problem getting his security deposit back from his previous landlord. This caused the tenant not to be able to pay a security deposit to this landlord, according to the landlord.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Jurisdiction-

I do not accept the landlord's assertion that this dispute falls outside the jurisdiction of the Act.

I was not convinced that the landlord on occasion sleeps in a bedroom in the lower suite; rather, I find the evidence points to the landlord renting out the multiple bedrooms within the residential property and the property is more in the way of a rooming house.

The landlord was not specific on how many times he may sleep in a spare bedroom in the lower unit or even how often he is in town. He mentioned in the hearing he can be gone for 8-9 months at a time.

I therefore find the landlord submitted insufficient evidence to show that this dispute falls outside the jurisdiction of the Act.

I therefore proceeded to decide the tenant's monetary claim.

Security deposit-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

In this case, I find the tenant has failed to provide sufficient evidence that he paid a security deposit. The tenant could have submitted evidence of a bank withdrawal in the amount or some other means to show that this amount was paid.

The landlord is required to provide receipts for payments received by the tenant and if the landlord failed to do so, the tenant should have addressed this matter earlier through a dispute resolution application.

I therefore dismiss the tenant's claim for a return of a security deposit.

Lost wages-

I find the tenant submitted insufficient evidence to show he lost any wages as a result of the landlord's actions.

I therefore dismiss the tenant's claim for lost wages.

Due to the above, I dismiss the tenant's application for monetary compensation, including his request for recovery of his filing fee.

Conclusion

The tenant's application and amended application are dismissed, without leave to reapply, for the reasons stated above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 6, 2019

Residential Tenancy Branch